

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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HAMBURG TWP,

Plaintiff/Counterdefendant-  
Appellant,

V

MICHIGAN ASSN OF POLICE and HAMBURG  
TWP POLICE OFFICERS ASSN,

Defendants/Counterplaintiffs-  
Appellees.

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UNPUBLISHED  
February 16, 2006

No. 255828  
Livingston Circuit Court  
LC No. 04-020519-CL

Before: Wilder, P.J., and Zahra and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition and upholding the arbitration award that reinstated Brandon Bullock as a Hamburg Township police officer. We affirm.

Bullock served alcohol to a minor<sup>1</sup> in his home and that minor was subsequently involved in a motorcycle accident in which the minor and his passenger sustained injury. The minor called Bullock and Bullock retrieved the motorcycle and the passengers and brought them home. Neither the police nor the paramedics were contacted. When Bullock's involvement in the accident was discovered, he was terminated from his employment. Defendants filed a grievance on Bullock's behalf asserting that there was no just cause for termination. Pursuant to the collective bargaining agreement that controlled Bullock's employment, the dispute was sent to binding arbitration. The arbitrator concluded that there was no "just cause" to terminate Bullock. The arbitrator converted Bullock's discipline to a suspension and reinstated Bullock as an officer.

Plaintiff first argues that the trial court erred in granting defendants' motion for summary disposition because the arbitrator exceeded his authority when he determined that Bullock had

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<sup>1</sup> It is disputed as to whether Bullock was aware that the minor was not 21 years old at the time.

committed acts for which he could be disciplined but not discharged and that the arbitrator's decision failed to "draw its essence" from the collective bargaining agreement. We disagree.

"It is well settled that judicial review of an arbitrator's decision is limited. A court may not review an arbitrator's factual findings or decision on the merits. Rather, a court may only decide whether the arbitrator's award "draws its essence" from the contract." *POAM v Manistee, Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002) (citations omitted). The collective bargaining agreement and the authority of the arbitrator in the present case are similar to the agreement and authority in *POAM, supra*. The collective bargaining agreement in *POAM* stated that the employer had the authority to "direct generally the work of the employees, subject to the terms and conditions of this Agreement, including the right to hire, to discharge, to demote, to suspend or otherwise discipline employees for just cause." *Id.* at 345. Based on that language we held the following.

This language acknowledges that discipline can take many forms, including discharge, demotion, and suspension. In context, the just cause requirement set forth relates to all the potential forms of discipline. Thus, there is not just one "just cause" analysis that the arbitrator is empowered to make. Rather, an arbitrator is given the authority to determine if the violations amount to "just cause for discharge," or "just cause for demotion," or "just cause for suspension," or "just cause for any other form of discipline." In other words, the agreement gives the arbitrator the authority to determine if there exists a "just cause for discipline" and, if so, the level of discipline appropriate.

...

Thus, the arbitrator was free under the agreement to conclude that while Best's misconduct served as just cause for discipline, it did not amount to just cause for discharge. The arbitrator was also empowered to fashion an appropriate level of discipline for the violations found. [*Bloomington v Local 2828 of the American Federation of State, Co. & Municipal Employees*, 290 NW2d 598, 602 (Minn., 1980)] (observing that "the power to fashion a remedy is a necessary part of the arbitrator's jurisdiction unless withdrawn from him by specific contractual language between the parties or by a written submission of issues which precludes the fashioning of a remedy"). [*Id.* at 345-346.]

The collective bargaining agreement in the present case also allows the employer discretion in disciplining the employees but mandates that the employer act within the bounds of the agreement. The agreement further mandates that in order to discipline, the employer must have "just cause." A full reading of the collective bargaining agreement in the present case mandates the same requirements of the employer as the collective bargaining agreement in *POAM*, i.e., that the employer has the discretion to discipline, including termination, but that the employer must have "just cause." Therefore, applying the analysis in *POAM* to the present case, the trial court properly granted defendant's motion for summary disposition. The arbitrator acted within his authority to determine what Bullock's violations of the rules of conduct was "just cause" for discipline but not "just cause" for termination.

Plaintiff asserts that the arbitrator found "just cause" for termination, but reduced Bullock's discipline to a suspension, thereby exceeding his authority. However, the arbitrator

did not state that there was “just cause” for termination; rather, he stated that Bullock “did a number of acts for which he could have been terminated.” When that statement is viewed in context, it is clear that the arbitrator was stating that Bullock had violated the rules of conduct for his employment and that a violations of those rules warrant discipline, which may include termination if there is “just cause.” However, the arbitrator ultimately concluded that no “just cause” for termination existed. As we noted in *Ferris College v AFSCME*, 138 Mich App 170, 178; 361 NW2d 342 (1984), a determination that there is “just cause” for termination is different from a determination that there were violations of the rules of conduct. The former makes the employer’s decision to discharge non-modifiable, while the latter gives the arbitrator the discretion to determine whether “just cause” for termination exists.

Therefore, the arbitrator’s award in the present case drew its essence from the contract, which required “just cause” for termination. The arbitrator was within his authority under that agreement to determine that Bullock’s actions constituted “just cause” for suspension, but not for termination. Thus, the trial court properly granted summary disposition.

Plaintiff’s second argument on appeal is that the trial court erred in granting defendants’ motion for summary disposition because the award was based on a material and substantial error in the law. We disagree.

This Court can vacate an arbitrator’s award if “the arbitrator exceeded his or her powers.” MCR 3.602(J)(c). An arbitrator exceeds his or her powers when ““whenever they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law.”” *Collins v Blue Cross*, 228 Mich App 560, 567; NW2d (1998), quoting *DAIE v Gavin*, 416 Mich 407, 434; 337 NW2d 418 (1982). “A reviewing court may vacate an arbitration award where it finds an error of law that is apparent on its face and so substantial that, but for the error, the award would have been substantially different.” *Id.*, citing *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991).

In the present case, the arbitrator concluded that Bullock was under no duty to report the accident because he was not the driver of the vehicle. Plaintiff asserts that under MCL 257.622, the driver of the motorcycle involved was required to report the accident to “the nearest or most convenient police officer,” which was Bullock; therefore, Bullock had a duty to respond to the report. Plaintiff also argues that under MCL 767.39, the aiding and abetting statute, Bullock is equally responsible for failing to report the accident because he aided in the failure to report the accident. Further, plaintiff argues that Bullock was under a continuing duty to report the accident because he is a public official and pursuant to MCL 752.11, he is responsible for enforcing the law. Assuming *arguendo* that plaintiff is correct and Bullock was required by law to report the accident, such a determination would not warrant the vacation of the arbitrator’s award. The application of the law in the present case was not central to the outcome of the case. There is nothing in the collective bargaining agreement in the present case that would require the arbitrator to uphold the termination if he determined that Bullock was required to report the accident and did not. Further, there is nothing in the arbitrator’s opinion that suggests that he would have found differently if Bullock was guilty of more than a civil infraction. In fact, while the arbitrator’s opinion indicates that Bullock was guilty of the criminal offence of serving alcohol to a minor regardless of whether Bullock had knowledge of that person’s age, the arbitrator’s ultimate conclusion was that there was no “just cause” for termination. Those conclusions, taken together, establish that the arbitrator’s finding as to whether Bullock violated

the law by failing to report the accident was not outcome determinative. Accordingly, reversal on that basis is not warranted. See *Collins, supra*.

Plaintiff next asserts that the arbitrator's award was based on the arbitrator's own sense of "industrial justice." We disagree.

The arbitrator stated his opinion that the politics of the township influenced the severity of the penalty that Bullock faced as a result of his misconduct. Relying on *Sheriff of Lenawee County v Police Officers Labor Council*, 239 Mich App 111; 607 NW2d 742 (2002), plaintiff asserts that the arbitrator's view of the township's political situation inappropriately influenced his ultimate opinion, to the extent that the arbitrator's opinion applies a form of "industrial justice." However, *Lenawee* is dissimilar. In *Lenawee*, the collective bargaining mandated that the employment relationship terminate if the employee knowingly made false statements on official documents. *Id.* at 116. This Court determined that the arbitrator had exceeded its authority when it determined that the employee had made such statements, but concluded that the employee could not be fired. In the present case, there is no clause in the collective bargaining agreement that mandates termination for conduct such as Bullock's. Therefore, *Lenawee*, is not controlling.

Moreover, while the arbitrator's opinion merely noted that he thought there were some procedural errors in the township's decision, none of the aggravating and mitigating circumstances set forth by the arbitrator in support of his decision to reinstate Bullock related to the politics of the township. We conclude, therefore, that the arbitrator properly considered the evidence related to Bullock's conduct and the terms of the agreement and concluded that just cause did not exist, and that the record does not support plaintiff's assertion that the arbitrator resorted to "his own form of industrial justice."

Plaintiff's final argument on appeal is that the trial court erred in granting defendant's motion for summary disposition because the award violates public policy. We disagree.

While the general rule is that arbitration awards are to receive judicial deference, a court may vacate an arbitration award when "it is contrary to public policy." *Gogebic Med Facility v AFSCME Local 922*, 209 Mich App 693, 697; 531 NW2d 728 (1995). "In *United Paperworkers Int'l Union, AFL-CIO v Misco, Inc.*, 484 US 29; 108 S Ct 364; 98 L Ed 2d 286 (1987),] however, the United States Supreme Court cautioned that this exception "is limited to situations where the contract as interpreted would violate 'some explicit public policy' that is 'well defined and dominant, and is to be ascertained 'by reference to the laws and legal precedent and not from general considerations of supposed public interest.' " *Id.* (citations omitted).

In *Gogebic, supra*, this Court vacated the arbitrator's decision to reinstate a nurse who had mentally abused a patient on the basis that the arbitration decision violated public policy. In vacating the arbitrator's decision, this Court, relying on 42 CFR 483.13(c)(1)(ii), "which prevents a medical care facility from employing individuals who have been (A) Found guilty of abusing, neglecting, or mistreating individuals by a court of law; or (B) Having had a finding entered in to the State nurse aide registry concerning abuse neglect, mistreatment of residents or misappropriation of their property," concluded that reinstating the defendant nurse would cause the medical care facility to act unlawfully and contrary to the regulation that "reflects a 'well

defined' and 'dominate' public policy in favor of protecting residents of long term care facilities from abusive treatment from nurses aids." *Id.* at 698.

Here, plaintiff contends that pursuant to MCL 752.11, there is a well-defined public policy that police officers must uphold the law, and that the arbitrator's award violates that public policy by reinstating Bullock. MCL 752.11 states the following: "[a]ny public official, appointed or elected, who is responsible for enforcing or upholding any law of this state and who willfully and knowingly fails to uphold or enforce the law with the result that any person's legal rights are denied is guilty of a misdemeanor." We agree that MCL 752.11 constitutes a defined public policy restriction on an officer's willful violation of the law in contravention of another person's rights. However, plaintiff presents no evidence that any person's rights were violated as a result of Bullock's conduct. Additionally, there is no statute that would make it unlawful to employ a police officer who violated the rules of conduct governing his employment. Therefore, MCL 752.11 does not support a finding that the arbitrator's award violates public policy.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra

/s/ Alton T. Davis